

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

ROBERT MILLER §
VS. § CIVIL ACTION NO. 1:20cv57
DAVID MARTINEZ, ET AL. §

MEMORANDUM OPINION REGARDING VENUE

Plaintiff Robert Miller, an inmate confined at the Hodge Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brings this civil rights complaint pursuant to 42 U.S.C. § 1983 against David Martinez and Ricky B. Smith.

The above-styled action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 and the Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Factual Background

Plaintiff sues defendant Smith, an attorney in Lamesa, Texas, for conspiring with defendant Martinez to pick an unbiased juror in a scheme to convict plaintiff in violation of his rights under the due process clause. Plaintiff sues defendant Martinez, an attorney in Lubbock, Texas, alleging Martinez failed to get him to the state hospital and conspired with defendant Smith to violate his constitutional rights.

Analysis

The Civil Rights Act, 42 U.S.C. §1981, *et seq.*, under which this case is brought, does not contain a specific venue provision. Accordingly, venue in civil rights cases is controlled by 28

U.S.C. § 1391. *Jones v. Bailey*, 58 F.R.D. 453 (N.D. Ga. 1972), *aff'd per curium*, 480 F.2d 805 (5th Cir. 1973).

When, as in this case, jurisdiction is not founded solely on diversity of citizenship, 28 U.S.C. § 1391 provides that venue is proper only in the judicial district where the defendants reside or in which the claim arose. Here, plaintiff complains of incidents which occurred in Lamesa and Lubbock, Texas. The city of Lamesa is located in Dawson County, Texas. The city of Lubbock is located in Lubbock County, Texas. Pursuant to 28 U.S.C. § 124, both Dawson County and Lubbock County are located in the Lubbock Division of the United States District Court for the Northern District of Texas. Accordingly, venue for such claims is not proper in the Eastern District of Texas.

When venue is not proper, the court “shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” 28 U.S.C. § 1406(a). This action should be transferred to the Northern District of Texas. An appropriate order so providing will be entered by the undersigned.

SIGNED this 25th day of March, 2020.



Zack Hawthorn
United States Magistrate Judge